

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

STEPHEN TALBERT,)
)
)
Movant,)
)
)
v.) No. 4:16CV139 ERW
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent,)

MEMORANDUM AND ORDER

This matter is before the Court on its own motion. Stephen Talbert filed a motion in the underlying criminal case, *United States v. Talbert*, 4:14CR197 ERW, seeking a court order directing defense counsel to send the case file to him. The Clerk construed the motion as a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. This was an error, and the Court will administratively terminate this case. *See Morales v. United States*, 304 F.3d 764, 765 (8th Cir. 2002) (before a district court reclassifies a pro se litigant's pleading as a motion to vacate, it must first warn the litigant of the restrictions on second or successive motions, and of the one-year limitations period for motions to vacate, and must provide the litigant an opportunity either to consent to the reclassification or to withdraw his motion).

Accordingly,

IT IS HEREBY ORDERED that this action is **ADMINISTRATIVELY TERMINATED**. This dismissal is **without prejudice** to filing a timely motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255.

IT IS FURTHER ORDERED that the Clerk is directed to file the motion [ECF No. 1] in the underlying criminal case as a motion to compel defense counsel to forward the case file to defendant.

So Ordered this 8th day of February, 2016.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE